

INFORMATION BULLETIN #98

INCOME TAX

MAY 2008

(Replaces Bulletin #98 dated July 2007)

DISCLAIMER: Information bulletins are intended to provide non-technical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this bulletin should serve only as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: College Choice 529 Education Savings Plan

EFFECTIVE DATE: January 1, 2008 (Retroactive)

REFERENCE: IC 6-3-3-12; IC 21-9; and Section 529 of the Internal Revenue Code

I. INTRODUCTION

IC 6-3-3-12 was enacted in 2006 and amended in 2007 and 2008 to provide a tax credit for contributions to the College Choice 529 Education Savings Plan. The credit applies to contributions made for taxable years beginning after December 31, 2006.

II. DEFINITIONS

A Code Sec. 529 plan is a reference to Section 529 of the Internal Revenue Code. A Code Sec. 529 plan is a program under which a person may make cash contributions to an account on behalf of a beneficiary for payment of qualified higher education expenses. The program must be established and maintained by a state or state agency. Qualified higher education expenses include tuition, fees, books, supplies and equipment required

by the educational institution for enrollment or attendance. Reasonable room and board expenses are included if the beneficiary is enrolled at least half-time. The “College Choice 529 Education Savings Plan” is Indiana’s Code Sec. 529 plan.

“Qualified Withdrawal” means a withdrawal or distribution from an account of the College Choice 529 Education Savings Plan that is made to pay for qualified higher education expenses, excluding any withdrawals or distributions for qualified higher education expenses if the withdrawal or distribution is made from an account that is terminated within 12 months after the account is opened.

Qualified withdrawals also include a withdrawal that is made:

- because of the death or disability of an account beneficiary;
- because an account beneficiary received a scholarship that paid all or part of the qualified higher education expenses of the account beneficiary; or
- because of a transfer of funds by the plan from one third party custodian to another.

“Non-qualified withdrawal” means a withdrawal or distribution from a college choice 529 savings plan that is not a qualified withdrawal.

A qualified withdrawal does not include a rollover distribution or transfer from the College Choice 529 Education Savings Plan to any other Code Sec. 529 plan or similar plan.

III. TAX CREDIT AVAILABILITY

The tax credit is available only to taxpayers that made contributions, including any rollover contributions from another Code Sec. 529 plan, to an account with the College Choice 529 Education Savings Plan. Contributions to accounts established through private colleges or universities are not eligible for the credit; however, funds in the College Choice 529 Education Savings Plan can be used by the account beneficiary to pay qualified higher education expenses for attendance at a private college or university.

The tax credit is available to an individual filing a single return or a married couple filing a joint return. The taxpayer is entitled to a credit against the adjusted gross income tax liability for a taxable year. The amount of the credit is the **lesser** of the following:

1. 20% of the amount of all contributions the taxpayer makes to an account or accounts of the College Choice 529 Education Savings Plan during the taxable year;
2. \$1,000; or
3. The amount of the taxpayer’s adjusted gross income tax liability for the taxable year reduced by the amount of credits allowed under IC 6-3-1 through IC 6-3-7.

A taxpayer qualifying for the credit is not entitled to a carry back, carry forward or a refund of any unused credit. The tax credit may not be sold, assigned or transferred by the taxpayer eligible to claim the credit.

A taxpayer shall claim the credit on the taxpayer's annual state income tax return. The taxpayer, upon request of the Department shall submit proof of the amount of contributions made to the trust account during the taxable year. The requested proof may be submitted by providing a copy of the trust account statement for the year in which the credit is claimed.

A taxpayer's Indiana tax liability for 2007 is \$1,000. Taxpayer has made prior tax payments in 2007 to the Department via withholding or estimated payments of \$1,000. Taxpayer has contributed \$400 to Indiana colleges in 2007 and is eligible to claim a \$200 College Credit. Taxpayer made a \$5,000 contribution to an account of the College Choice 529 Education Savings Plan for 2007 so that he is entitled to a \$1,000 529 Plan Credit. On Taxpayer's 2007 adjusted gross income tax return, the \$200 College Credit is applied to reduce Taxpayer's tax liability from \$1,000 to \$800. Then \$800 of the 529 Plan Credit is applied against the \$800 balance of Taxpayer's tax liability to reduce this tax liability to \$0. The remaining \$200 of 529 Plan Credit is not usable. Because the combination of the College Credit and 529 Plan Credit have reduced Taxpayer's liability to \$0, Taxpayer has overpaid his 2007 taxes by \$1,000 and is entitled to a \$1,000 refund. The Taxpayer is not entitled to any refund, carryback or carryforward of the \$200 unused 529 Plan Credit.

IV. TAX CREDIT RECAPTURE

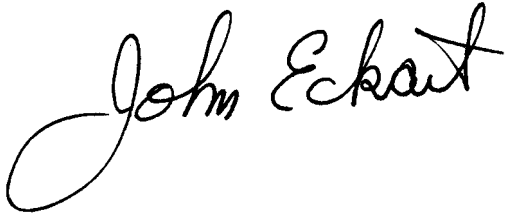
An account owner of a College Choice 529 Education Savings Plan who makes a non-qualified withdrawal in a taxable year must repay all or part of the tax credit in the year in which the non-qualified withdrawal is made from the account. The amount to be repaid is equal to the lesser of:

- 20% of the total amount of non-qualified withdrawals made during the taxable year from the account; or
- the excess of the cumulative amount of all credits that are claimed by any taxpayer with respect to the taxpayer's contributions made to the account for all taxable years beginning on or after January 1, 2007 minus the cumulative amount of tax credits repaid by the account owner for all prior taxable years beginning on or after January 1, 2008.

The required repayment shall be reported by the account owner on the account owner's annual income tax return for the taxable year in which the non-qualified withdrawal is made.

If an account owner is not required to file an annual income tax return for a taxable year in which a nonqualified withdrawal is made, and the account owner does not make the required repayment, the Department shall issue a demand notice in accordance with IC 6-8.1-8-2.

Indiana's College Choice 529 Education Savings Plan is administered through the Indiana Education Savings Authority. More information can be obtained from their Web site at www.in.gov/iesa/ and at www.collegechoiceplan.com

A handwritten signature in black ink that reads "John Eckart". The signature is written in a cursive style with a large, looping initial "J".

John Eckart
Commissioner